Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services	CC Docket No. 96-21

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REPLY IN SUPPORT OF PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF MCI TELECOMMUNICATIONS CORPORATION

Pursuant to Section 1.429(g) of the Commission's Rules and Regulations, 47 C.F.R. § 1.429(g), MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby replies to the oppositions filed by Bell Atlantic, Pacific Telesis Group (Pacific) and NYNEX Corporation to MCI's Petition for Reconsideration and/or Clarification of the Report and Order (Order) released in the above-captioned proceeding on July 1, 1996.[1]

MCI requested that, where facilities-based outbound out-of-region international traffic carried by a Bell Operating Company (BOC) generates international "return" traffic terminating in the BOC's region, such return traffic be treated as in-region interLATA originating traffic and thus beyond the BOC's authority to carry until it obtains in-region authority under Section 271 of the Communications Act. As explained below, the oppositions filed by the BOCs elevate form over substance and fail to address the real harms that would flow from allowing BOCs to handle such in-region return traffic.

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[1] FCC No. 96-288, published at 61 Fed. Reg. 35964 (July 9, 1996).

A. MCI's Petition

Section 271(j) of the Act provides that 800 service, private line service "or their equivalents" that terminate within a BOC's region and allow the called party to determine the interLATA carrier should be considered in-region interLATA services subject to all of the requirements for in-region service, which is defined in Section 271(b)(1) as interLATA service originating in a BOC's region. As discussed in MCI's Petition, a BOC could generate return traffic to its region by virtue of its outbound international facilities-based service. A BOC in that situation thus exercises the type of control over the choice of carrier for such return traffic -- namely, itself -- that a caller usually does domestically.

Neither the caller nor the called party to an international call originating overseas chooses the U.S. interLATA carrier in the same manner as in the case of domestic calls, but, in effect, international return traffic is elicited by a carrier's outbound international traffic through the workings of the proportionate return policy. Since a foreign calling party to an international call exercises no control at all on the choice of carrier, and the BOC has generated the return traffic, such traffic terminating in a BOC's region should be treated in the same manner as interLATA service originating in the BOC's region. The BOC exercises the type of control over such traffic that it does over traffic originating in-region, thus raising similar

competitive and ratepayer concerns.

B. The BOC Oppositions

Bell Atlantic, Pacific and NYNEX raise a variety of objections to MCI's requested clarification. They argue that since the called party does not choose the interLATA carrier handling an international return call, return traffic terminating in-region does not fall within the category of the "equivalents" to 800 and private line service that qualify as in-region traffic under Section 271(j).[2] NYNEX cites the finding in the Order that calling card, collect and third-party billed calls should not be treated as in-region calls under Section 271(j) because the called party does not determine the interLATA carrier.[3] Pacific asserts that under MCI's theory, a BOC could not carry any out-of-region facilities-based traffic until it secured in-region authority, since such out-of-region traffic would inevitably generate in-region return traffic.[4]

They also argue that there are no competitive or other policy concerns that are raised by such return traffic that would justify its unique treatment as in-region traffic.[5] Pacific asserts that since no in-region customer selects the carrier, international return traffic is different from in-region traffic as well as from 800 or private line service "or their

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[2] NYNEX Opp. at 2-4; Bell Atlantic Opp. at 2.

[3] Order at ¶ 47, cited in NYNEX Opp. at 3-4.

[4] Pacific Opp. at 2.

[5] NYNEX Opp. at 4; Pacific Opp. at 3.

equivalents."[6]

C. International Return Traffic Terminated in a BOC's Region Raises the Same Competitive Concerns as In-Region Traffic

Pacific highlights the policy issue here in claiming that the BOCs cannot use their market dominance to influence the choice of carrier for international return traffic.[7] As the BOCs point out, however, the foreign carrier originating the return call chooses the U.S. interLATA carrier, based on the proportionate return rules.[8] It would be quite feasible for the BOC to secure the agreement of a foreign administration, in routing return traffic under the proportionate return rules, to route calls terminating in a given BOC's region to that BOC. The BOC would then have an unusually "rich" mix of return traffic, with a disproportionate volume of calls for which it could keep the entire accounting rate and not have to pay out terminating access charges to another LEC.[9]

Such an "enriched" return traffic strategy would only be feasible because of the BOC's large monopoly customer base. Furthermore, that enriched return traffic would be handed to the

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[6] Pacific Opp. at 3.

[7] Id. at 3.

[8] Pacific Opp. at 2; Bell Atlantic at 2-3.

[9] It would be technically feasible for foreign administrations to route return traffic in this manner or, for that matter, to do the opposite -- i.e., to route return traffic terminating in a given BOC's region to another carrier. Generally, foreign administrations have the capability in their switches to screen six or seven digits, thereby allowing routing by NPA.

BOC on a silver platter, rather than as the result of any competitive activity. The BOC would thus garner a significant cost advantage, unavailable to its international competitors, that is derived solely from its regional monopoly heritage. Permitting BOCs to handle such in-region return traffic accordingly would thwart Congress's goal of freeing the telecommunications industry from the stifling effects of cozy market sharing arrangements.

D. International Return Traffic Terminating in a BOC's Region Falls Within the Terms of Section 271(j)

As MCI explained in its Petition, a BOC generating international return traffic that terminates in its region exercises the type of control over the choice of carrier for such return traffic -- namely, itself -- that a caller typically does for most non-800 domestic traffic. Thus, the competitive goals reflected in Section 271(j) -- to postpone BOC provision of interLATA traffic presenting competitive risks equivalent to those raised by the in-region origination of interLATA traffic -- apply even more strongly to such return traffic than they do to 800 or private line services, since it is the BOC that is generating such traffic for itself. Such return traffic therefore fits within the evident purposes of Section 271(j), especially given the possibilities for manipulating the traffic mix to favor the BOC over its interLATA rivals.

The main argument against the treatment sought by MCI for international return traffic terminating in a BOC's region is that the called party does not choose the interLATA carrier.

Given the evident purposes of Section 271(j), however, it is clear that the requirement that a qualifying service "allow the called party to determine the interLATA carrier" was intended to distinguish such services from the typical service in which the caller chooses the carrier. The examples given in the statute, namely, 800 and private line services, underscore that implicit dichotomy. The situation in which neither the caller nor the called party chooses the interLATA carrier -- which, as Pacific points out, is unique to international return traffic[10] -- was simply not contemplated.

Thus, it is not so obvious as the BOCs assume that international return traffic was intended to be excluded by the language of Section 271(j), given the goals reflected in that provision. Rather, the Commission should be realistic in applying that provision and recognize that such traffic was not contemplated and thus does not clearly fall within or outside the category of "equivalents" to in-region services. Accordingly, the Commission should look beyond the literal meaning of the "called party" clause to read Section 271(j) in light of its apparent purposes, especially in the context of Sections 271 and 272 overall.[11] As explained above, those purposes militate strongly in favor of treating such return traffic as in-region traffic, as it is more similar in its competitive risk

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[10] Pacific Opp. at 3-4.

[11] See 2A Sutherland, Statutory Construction § 46.07 (5th Ed.)("A statute should not be read literally where such a reading is contrary to its purposes.")

characteristics to interLATA traffic terminating in-region for which the called party determines the carrier than it is to such traffic for which the caller determines the carrier.[12]

The ruling in the Order on calling card, collect and third-party billed calls reinforces this approach since the rationale for finding those services not to be "equivalents" to in-region service was that "it is the calling party, not the called party, that determines the interLATA carrier." (Emphasis in original.)[13] That finding demonstrates that the "called party" clause was intended to distinguish calls in which the called party determines the carrier from those in which the calling party determines the carrier and therefore does not necessarily exclude calls where neither party determines the carrier.[14]

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[12] The Commission has looked beyond the literal meaning of the language in the Telecommunications Act of 1996 in interpreting other provisions. For example, in its Notice of Proposed Rulemaking in the Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, FCC 96-221 (released May 17, 1996) the Commission has tentatively construed the term "service" in Section 222(c)(1) to mean a particular type of "service category," in light of the purposes of that provision. Id. at ¶ 20.

[13] Order at ¶ 47.

[14] Pacific's argument that no BOC could carry any out-of-region traffic prior to obtaining in-region authority under MCI's approach vastly overstates the implications of MCI's Petition. MCI did not advocate, in its Petition, any prohibition as to international, or any other, BOC interLATA traffic originating out-of-region in the United States. MCI has simply requested that where such traffic generates international return traffic terminating in the BOC's region, the BOC should be precluded from the interLATA carriage of those return calls until it obtains in-region authority.

Moreover, under Section 4(i) of the Communications Act, "the Commission may ... make such rules and regulations ... not inconsistent with [the Communications Act], as may be necessary in the execution of its functions."[15] Given the competitive risks posed by BOC provision of international return traffic terminating in its region and the possibilities for manipulation presented thereby, as discussed above, Section 4(i) reinforces the treatment of such traffic sought by MCI. Because the evident purposes of Section 271(j) require an interpretation of the "called party" clause that looks beyond its literal meaning, Section 271(j) is not inconsistent with an application of Section 4(i) that requires such return traffic to be treated like in-region interLATA traffic.

Nothing in the Telecommunications Act of 1996 in any way displaces or narrows the scope of Section 4(i), and, thus, the Commission has the express authority under Section 4(i) to fill in the interstices of the Act in order to "ensure the achievement of the Commission's statutory responsibilities,"[16] including the advancement of the competitive goals of Section 271(j). Since those goals would best be accomplished by treating international return traffic terminating in a BOC's region as in-region interLATA traffic, the Commission should use its "necessary and proper" authority under Section 4(i) to require such treatment.

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[15] 47 U.S.C. § 154(i).

[16] Mobile Communications Corp. Of America v. FCC, 77 F.3d 1399 (D.C. Cir. 1996), quoting FCC v. Midwest Video Corp., 440 U.S. 689, 706 (1979).

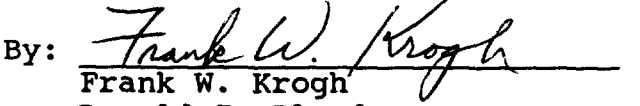
Conclusion

For the reasons stated in MCI's Petition and this Reply, the Commission should clarify or reconsider its Order to require that international return traffic terminating in a BOC's region -- generated as a result of the BOC's facilities-based out-of-region outbound international traffic -- be considered as equivalent to in-region interLATA traffic and that the BOC thus be precluded from the interLATA carriage of such traffic until the BOC secures in-region authority.

In the event that the Commission does not grant MCI the relief requested in its Petition, MCI requests, at the very least, that the Commission prohibit the type of "grooming" arrangement discussed above, under which a foreign administration would agree to select the type of return traffic for a particular BOC under the proportionate return rules, and that all BOCs providing out-of-region facilities-based international service be subject to special traffic reporting requirements, particularly as to their return traffic, sufficient to enable the Commission to enforce such prohibition.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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Dated: October 4, 1996

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MOTION FOR LEAVE TO FILE OUT OF TIME

MCI Telecommunications Corporation (MCI), by its undersigned counsel, requests leave to file, one day late, the accompanying Reply in Support of its Petition for Reconsideration and/or Clarification of the Report and Order (Order) released in the above-captioned proceeding.[1] According to the Federal Register publication of notice of the filing of MCI's Petition, oppositions were due on September 20, 1996 and replies due 10 days later.[2] MCI's Reply to three oppositions served by mail was accordingly due on October 3, 1996.

Unfortunately, confusion as to the 10-day reply time and production problems, exacerbated by the press of other business, including pleadings and meetings with Commission staff in other dockets related to the implementation of the Telecommunications Act of 1996, caused MCI to miss the filing deadline of October 3rd. As the attached Reply completes the pleading cycle on MCI's Petition, which was the only petition for reconsideration or clarification of the Order filed by any party, however, no other

[1] FCC No. 96-288, published at 61 Fed. Reg. 35964 (July 9, 1996).

[2] 61 Fed. Reg. 46807 (Sept. 5, 1996).

party will be prejudiced by MCI's tardiness. Moreover, acceptance of the attached Reply will facilitate the Commission's review of the issue raised by MCI's Petition.

WHEREFORE, given the public interest in resolving the issue raised in MCI's Petition on a full record and the lack of any prejudice that will be caused by the acceptance of the attached Reply for filing, MCI submits that good cause has been shown to allow MCI to file the attached Reply one day late.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

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CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, hereby certify that a true copy of the foregoing "REPLY IN SUPPORT OF PETITION FOR RECONSIDERATION AND/OR CLARIFICATION AND MOTION FOR LEAVE TO FILE OUT OF TIME" was served this 4th day of October, 1996, by hand delivery or first class mail, postage prepaid,upon each of the following persons:

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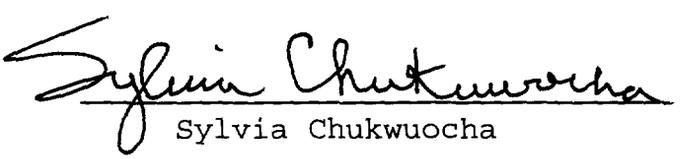

Sylvia Chukwuocha